



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Digital Devices, Inc.

File: B-225301

Date: March 12, 1987

DIGEST

1. Agency properly determined that a proposal was technically unacceptable based on descriptive material submitted with the best and final offer where the agency reasonably concluded from the material that the offeror's equipment would not possess an essential feature required by the solicitation.
2. Where an agency properly determines that a particular proposal is technically unacceptable based on material submitted with the best and final offer, it is not required to reopen negotiations to permit the offeror to demonstrate the merits of its proposal.
3. In the absence of a finding that the agency unreasonably excluded the protester from the procurement, the protester is not entitled to recover the costs of preparing its proposal or of filing and pursuing its protest.

DECISION

Digital Devices, Inc. protests the award of a contract to SOLTEC Corporation under request for proposals (RFP) No. DAAL02-86-R-9597, issued by the U.S. Army Laboratory Command, Adelphi, Maryland. Digital contends that the agency improperly determined the firm's best and final offer was technically unacceptable. Digital does not now seek the award of the contract, but claims that it is entitled to the costs of preparing its proposal and of filing and pursuing this protest. We deny the protest and the claim for costs.

The solicitation is for an 8-channel signal recorder for use in a testing system. Initially, the agency attempted to procure the equipment by soliciting sealed bids, but canceled the invitation for bids (IFB) after determining that all of the bids received were nonresponsive. With respect to

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Digital Devices, the agency reports that one of the reasons the firm's bid was considered nonresponsive was that the bid was not accompanied by sufficient descriptive literature. Digital had submitted a brief description of its signal recorder that did not address the specific requirements set forth in the IFB. The agency decided to continue the procurement by soliciting competitive proposals, citing Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.103 (1986), and informed the firms that had submitted bids of the schedule for negotiations and of the date for submission of best and final offers. Award was to be made to that responsible offeror whose proposal was technically acceptable and whose price was lowest.

The record shows that negotiations with each of the firms covered the solicitation requirements that, based on its review of the descriptive literature submitted with the bids, the agency believed would not be met by the equipment offered. Among the requirements discussed with Digital was solicitation paragraph C.4(e), which read as follows: "Selectable pre and post-trigger delays from 100% pre-trigger to 100% post-trigger for all channels simultaneously, with at least three (3) steps in between." According to the agency, this feature would provide the capability to capture and view a signal or waveform either prior to or after a triggering event. The period over which the signal must be subject to capture, says the agency, must extend from 100 percent of the length of the record prior to the triggering event (the "record" is comprised of a number of "samples") to 100 percent of the length of the record subsequent to the triggering event. The agency says that equipment not possessing this capability is unacceptable.

The protester submitted a best and final offer in the amount of \$27,490. Included with the offer was a detailed description of the firm's proposed signal recorder. This material stated: "A pre or post sample trigger is also available and may be selected by a PC I/O [personal computer input/output] post instruction. This trigger may be selected to precede or follow the actual sample trigger by 1 period, .75 period, .5 period, [or] .25 period, and is available on the back panel through BNC connectors." The agency interpreted this statement as indicating that Digital's proposed equipment had two distinct triggers. One trigger, the "actual sample trigger," would establish a sampling rate. A second trigger, the "pre or post sample trigger" would be capable, concluded the agency, of altering the sampling rate established by the actual sample trigger. The agency noted that Digital's

equipment thus appeared to allow for triggering variability from one sample to the next, but did not appear to permit triggering variability over a record length, which is comprised of many samples. Further, there was no indication that Digital's equipment would allow for triggering variability for all channels simultaneously. Because it appeared that Digital's proposed equipment would not provide the capability contemplated by solicitation paragraph C.4(e), the agency determined that the proposal was technically unacceptable and awarded a contract for \$39,441.60 to SOLTEC, the only offeror that had submitted a technically acceptable proposal. The government's estimate had been \$41,000.

Digital filed a protest with this Office complaining that the agency did not have a valid reason for rejecting the firm's offer. Digital noted that its proposed price was lower than SOLTEC's and that the agency's letter to Digital advising of the award to SOLTEC specifically acknowledged that Digital's proposed equipment would have the capability required by paragraph C.4(e) of the solicitation. In its report on the protest, the agency explains that its rejection letter to Digital should have stated that Digital's signal recorder would not conform to paragraph C.4(e); the omission of the word "not" was inadvertent, says the agency. In any event, the protester contends that the wording of its proposal was clear and that its equipment would meet the requirements of the RFP. Digital argues that if the agency had any doubts concerning this, it should have requested the firm to clarify the proposal rather than simply reject what Digital says was its "first, post-discussion technical submission."

The principal issue here is whether the agency properly determined that Digital's proposal was technically unacceptable following the receipt of best and final offers. In this respect, the evaluation of proposals is primarily the responsibility of the procuring agency, and we will not question an agency's technical evaluation unless a protester shows that the agency's evaluation was unreasonable or in violation of the procurement statutes or regulations. Xerox Special Information Systems, B-215557, Feb. 13, 1985, 85-1 CPD ¶ 192. A protester bears the burden of showing that the evaluation was unreasonable, Sun Enterprises, B-221438.2, Apr. 18, 1986, 86-1 CPD ¶ 384, and the mere fact that the protester may disagree with the agency's evaluation does not render the evaluation unreasonable. Harbert International, Inc., B-222472, July 15, 1986, 86-2 CPD ¶ 67. Further, where

the agency offers specific technical reasons for the rejection of a proposal as technically unacceptable, the protester at least must explain why it believes the agency's position is incorrect. International Imaging Systems, B-224401, Sept. 15, 1986, 86-2 CPD ¶ 302.

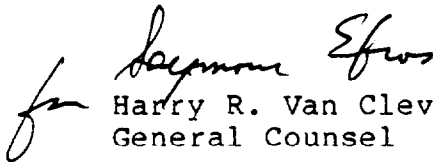
In this case, the agency defends its determination that Digital's best and final offer was technically unacceptable on the basis that it appeared that the firm's signal recorder would have two distinct triggers that would not provide the trigger delay capability required by solicitation paragraph C.4(e), and that there was no indication in the offer that the triggering variability of Digital's proposed equipment would, as required, extend to all channels simultaneously. From our reading of the descriptive material Digital provided with its best and final offer, we cannot conclude that the agency's interpretation of this material was unreasonable. Moreover, while Digital says that its signal recorder "would meet the specifications of the RFP," the firm does not allege that its equipment would perform the same trigger delay function the agency says is required, nor has it attempted to offer any explanation at all of its view that the agency's understanding of the firm's best and final offer was incorrect. Thus, since the agency's evaluation of Digital's offer has not been shown to have been unreasonable or otherwise improper, we have no basis to question it.

We also find no merit to the protester's suggestion that after evaluating the best and final offers the agency was required to seek clarification concerning whether Digital's proposed equipment would comply with the requirement of solicitation paragraph C.4(e). A best and final offer that does not comply with required terms of the solicitation properly may be rejected as technically unacceptable. ITT Telecommunications Division, B-185546, July 9, 1976, 76-2 CPD ¶ 24. While an agency sometimes may seek to clarify minor uncertainties in particular proposals, Emerson Electric Co., B-213382, Feb. 23, 1984, 84-1 CPD ¶ 233, where the information sought from an offeror is essential to determining the acceptability of the proposal the agency's request for information constitutes the reopening of negotiations, RCA Service Co., B-219643, Nov. 18, 1985, 85-2 CPD ¶ 563, and an agency has no legal duty to reopen the competition to permit a single offeror another chance to demonstrate the merits of its proposal. The Management and Technical Services Company, a subsidiary of the General Electric Co., B-209513, Dec. 23, 1982, 82-2 CPD ¶ 571. Here, the agency's memorandum

of the telephone negotiations with Digital lists solicitation paragraph C.4(e) as one of the specific requirements discussed with Digital. It appears, therefore, that the firm had the benefit of discussions on this point, but simply failed to address the requirement clearly in its best and final offer.

Finally, the protester's offer to supply its signal recorder at a price less than SOLTEC's is not a relevant consideration. Because the agency reasonably determined Digital's proposal to be technically unacceptable, the proposal could not be considered for award regardless of the lower proposed price. Xerox Special Information Systems, B-215557, supra.

The protest is denied. Since we conclude that the agency did not unreasonably exclude the protester from the procurement, the protester is not entitled to recover the costs of preparing its proposal or of filing and pursuing this protest. Bid Protest Regulations, 4 C.F.R. § 21.6(d) and (e) (1986).


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